FILE COPY

NOV 25 19
JAMES D. HA

No. 745

Supreme Court of the United States

STANDARD VARNISH WORKS,
Libellant-Appellant,

against

THE STEAMSHIP BRIS, REDEREIAKTIE-BOLAGET BORE,
Claimant-Appellee.

MOTION TO ADVANCE CAUSE.

JULIUS J. FRANK,
Proctor for Appellant.

CHARLES S. HAIGHT,
Proctor for Appellee.

Supreme Court of the United States

STANDARD VARNISH WORKS,
Libellant-Appellant,

against

The Steamship BRIS, REDEREIAK-TIEBOLAGET BORE,
Claimant-Appellee.

On Certificate from the Circuit Court of Appeals for the Second Circuit. October Term, 1918.

And now comes Standard Varnish Works, by Julius J. Frank, its proctor, and Everett P. Wheeler, of counsel, and on the certificate duly filed herein, and the annexed affidavit, moves this honorable Court to advance this cause, so that the same shall be heard next after the case of the International Paper Company against the Schooner Gracie D. Chambers, etc., Number 479 on the docket, which has been set for argument on the ninth day of December, 1918, after the causes previously assigned for hearing on that day.

JULIUS J. FRANK, Proctor for Libellant-Appellant; EVERETT P. WHEELER, of Counsel.

I join in the foregoing motion.

CHARLES S. HAIGHT,
Proctor for Steamship Bris.

Washington, D. C., 21 November, 1918.

UNITED STATES SUPREME COURT.

STANDARD VARNISH WORKS,
Libellant-Appellant,

against

The Steamship BRIS, REDEREIAK-TIEBOLAGET BORE,
Claimant-Appellee.

On Certificate from the Circuit Court of Appeals for the Second Circuit.

Southern District of New York, } ss.:
County of New York, }

Julius J. Frank, being duly sworn, deposes and says:

1. I am the proctor for the Libellant and Appellant in this case.

2. The libel in this case was filed in the District Court of the United States for the Southern District of New York, on the 16th day of January, 1918, against the Steamship Bris, to recover advanced freight which had been paid to the agents of said steamship by the libellant in August, 1917, for the transportation of merchandise from the Port of New York to the Port of Gothenburg in Sweden. The libel alleges that the voyage was never begun; that the cargo was discharged by

the agents of the Bris; and claims that the advanced freight should be repaid to libellant.

3. The answer admits that the freight was paid as alleged; that the voyage was never begun, and that the goods were discharged. It sets up defence under the terms of the bill of lading and under certain proclamations of the President of the United States and orders of the Exports Administrative Board.

4. The cause was heard on exceptions to the answer, and the libel was dismissed by Judge Knox, on the authority of the decision of the Circuit Court of Appeals, in the case of The International Paper Company against the Gracie D. Chambers, which had just been rendered by that Court. From the decree rendered upon this decision the libellant appealed to said last mentioned Court.

5. Meanwhile in the case of the Allanwilde, which was also a suit to recover advance freight which had been paid to a ship which had never begun her voyage, a decree in favor of libellant had been rendered upon the decision of Judge Rellstab of the District Court for the District of New Jersey. From this decree an appeal was taken to the Circuit Court of Appeals for the Third Circuit, which certified to this Court certain questions arising therein.

6. In the case of the Gracie D. Chambers, before mentioned, a decree was entered upon the decision of the Circuit Court of Appeals for the Sec-

ond Circuit reversing the decree which had been entered in favor of the libellant and dismissing the libel. A writ of certiorari to review this decree was issued out of this Court, and a return to said writ was duly filed and is now on the docket of this Court, Number 479. Upon motion duly made this Court advanced the hearing of the last mentioned case and set it down to be heard on the 9th day of December, 1918; and has also set for said day the hearing upon the certificate in the case of the Allanwilde.

7. The question of the return of prepaid freight has become conspicuous because of the war. It arises in connection with the Gracie D. Chambers in connection with the breaking up of the voyage because the public authorities would not allow the vessel to sail. It arises in the present case in connection with the failure of the shipper to procure an export license from the United States and with the refusal of the United States to grant such license—an important distinction.

The clause in the Gracie D. Chambers reads:

> "Freight to be prepaid in full without discount, retained and irrevocable, ship and/or cargo lost or not lost."

The main question argued there was whether the fact that the vessel had not broken ground would prevent the retention of the freight. In the present case the clause read:

> "Prepaid freight is to be considered as earned on shipment of the goods and is to be

retained by the vessel's owners vessel or cargo lost or not lost."

This is a common form of clause.

We submit that it is very important not only for our clients, but for the maritime world generally, that when this Court considers the Gracie D. Chambers and the Allanwilde it should consider the whole subject in a way that it could not do if the present case or some similar case were not before it. On this ground the counsel for both parties in the present case asked the Circuit Court of Appeals to certify to this Court the questions arising in the Bris.

8. It was stated by counsel for the claimant on the argument in this case (and I verily believe it to be true) that there are claims amounting to several millions of dollars for the return of advanced freight on three steamers in which clients of his office are concerned, where the clause is the same that it is in this case and where a voyage was prevented through the failure of the United States Government to grant a cargo license, and that he represents four other vessels where the clauses are similar and that the interests which will be affected by the decision to be rendered by this Court upon the questions to be argued before it in the case of the Gracie D. Chambers and in that of the Allanwilde, throughout the country are undoubtedly very large. Both libellant and claimant in this case are desirous of being heard upon the argument of the said questions before this Court and both joined in the application for a certificate from the Circuit Court of Appeals stat-

ing that they intended to apply to have the case advanced for argument on December 9th, and the Circuit Court of Appeals for the Second Circuit, feeling no doubt that it was in the public interest that the whole subject should come before this Court at that time, certified this question to this Court accordingly.

9. The present case involves no controversies of fact.

J. J. FRANK.

Sworn to before me this
22nd day of November, 1918.

HENRY L. KETCHAM,
Notary Public,
Rockland Co.
Cert. filed N. Y. Co.